IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1279 of 2006

with

SPECIAL CRIMINAL APPLICATION NO. 1281 of 2006

with

SPECIAL CRIMINAL APPLICATION No. 1282 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

BHARATBHAI AASANDAS TILANI – Petitioner
Versus
STATE OF GUJARAT & 4 - Respondents

==========

Appearance :
MR ASHISH M DAGLI for Petitioner : 1,
MR IM PANDYA ADDL PUBLIC PROSECUTOR for Respondent: 1,
RULE SERVED BY DS for Respondent(s) : 2 - 5.
MR AJAYKUMAR CHOKSI for Respondent with
MR VAIBHAV A VYAS for Respondent(s) : 2 - 5.

==========

CORAM : HONOURABLE MR.JUSTICE S.R.BRAHMBHATT

Date : 30/08/2006

COMMON ORAL JUDGMENT

1. Rule. Mr. I.M.Pandya, learned Addl.P.P. waives service of Rule on behalf of respondent No. 1 – State of Gujarat and Mr. A.C. Choksi with Mr. Vaibhav Vyas waives service of Rule on behalf of respondent No. 2 to 5. With the consent of the counsels, matters are fixed forthwith.

2. There is a general consensus arrived at between the parties that all the three matters could be disposed of by laying down appropriate terms and conditions so that the wife should receive her arrears of maintenance amount and regular maintenance per month as ordered by the concerned Court vide order dated 7.11.2003 in the proceedings of Criminal Misc. Application No. 638 of 2001.

3. Shri Dagli, learned counsel appearing on behalf of the petitioner under instructions of the petitioner states at bar that by now, an amount of Rs.20,000=00 is paid and today, the further amount of Rs.80,000=00 is kept ready so the same could be handed over to the learned counsel for the respondent No. 2-wife. He submits that the petitioner is ready and willing to file an undertaking to this effect that the remaining amount of Rs.85,460=00 could be paid in equal monthly installments of Rs.10,000=00 each, over

the period of 8 months and over and above this, the regular amount of maintenance of Rs.4200=00 per month shall also be paid on or before 7th day of each English calender month.

4. Shri A.C.Choksi, learned counsel with Shri Vaibhav Vyas for the respondent No. 2 wife submits that if such an arrangement is made, then, he has instructions on behalf of the respondent No. 2 i.e. wife to accept the terms and conditions and he would not object if the petitioner is ordered to be released forthwith. However, he submits that proper care should be taken to see that the petitioner may not leave the country, as in case if he leaves the country, then her client will be left without effective remedy. Shri Dagli has submitted on instructions on behalf of the petitioner that in case, he is released, his passport shall be deposited before the concerned trial court, which shall not be released without appropriate order from the concerned trial Court.

5. Shri Dagli, learned counsel for the petitioner requests that regular maintenance amount shall be paid without prejudice to his right to challenge the same in appropriate forum by resorting to appropriate application or remedy available. Shri Choksi, learned counsel for the respondent No. 2 has submitted that the Criminal Revision Application No. 69 of 2004 has been

withdrawn, which was in fact challenged before this Court challenging the amount of maintenance. Be that at it may. If any rights are available to the petitioner, the same may be decided in accordance with law.

6. The brother of the petitioner Shri Dolatram Aasandas Tilani and the respondent No. 2 wife are present in the court and the counsel appearing for the parties have also identified them.

7. In view of this, keeping the petitioner under custody would not result into any fruitful purpose as against this, by permitting him to be discharged from the custody on the aforesaid terms and conditions would help the wife in recovering and receiving her arrears of maintenance as well as regular maintenance. Accordingly, all these three matters are disposed of with following directions.

(a) The amount of Rs.80,000=00 is handed over to the respondent No. 2 wife and the receipt thereof is passed on to the petitioner's advocate. The remaining amount of Rs.85,450=00 shall be paid within the period of 8 months in equal monthly installments of Rs.10000=00. The balance amount shall properly be added in the last installment. Thus, by the 8th installment, the total amount of Rs.1,85,000=0 shall be paid

to the respondent No. 2 wife (Rs.20,000=00 paid in cash + Rs.80,000=00 paid in cash today and Rs.85,460=00 to be paid in 8 equal installments and the last installment shall accordingly includes the remaining amount also.)

(b) The petitioner shall file an undertaking before the trial Court with the copy to other side that he shall not leave India without prior permission of the trial Court and he shall deposit his passport before the Trial Court.

(c.) He shall also file an undertaking to the effect that remaining amount of Rs.85,460=00 shall be paid by him to the respondent No 2 wife in 8 equal monthly installments of Rs.10,000=00, and the same shall be paid on or before 7th day of each English calender month.

(d) The petitioner shall also file an undertaking that regular maintenance amount, which comes to Rs.4200/- per month shall also be paid regularly to the respondent No. 2 on or before 7th day of each English calender month.

8. The petitioner shall be released on production of receipt of payment of Rs.80,000=00 and the copy of the receipt of depositing his passport before the trial Court. The petitioner shall file an undertaking to the aforesaid extent within 7 days from his release.

9. With these observations and directions, all the three matters are partly allowed. Rule is made absolute in each matter to the aforesaid extent. Direct service permitted.

(S.R.BRAHMBHATT, J.)

pallav